IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2666 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHIRAJLAL RAMCHANDRA PANDYA & 11 - Petitioner(s)
Versus
GUJARAT STATE CO.OP. TRIBUNAL & 2 - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1 - 12.- for Petitioner(s) : 0.0.0
RULE SERVED for Respondent(s) : 1, 3,
MS ML SHAH, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/10/2006

ORAL JUDGMENT

1. The petitioners challenge an order dated 25-5-1999 passed by the Inquiry Officer under

Section 93 of the Gujarat Cooperative Societies Act(here-in-after referred to as “the said Act”) as upheld by the judgement dated 2-8-2003 passed by the Cooperative Tribunal in Appeal No.467/1999.

2. The petitioners were members of the Managing Committee of respondent no.3-society. Inquiry officer had by the impugned order directed for a recovery of Rs.27,930/- from each of the petitioners. This was so on the ground that the petitioners as members of the Managing Committee of the Society did not take appropriate steps to prevent misappropriation of the society's fund by an employee one Shri Desaibhai Ishwarbhai Patel. Arising out of the same orders, this Court had disposed of Special Civil Application No.13627/2003 by judgement dated 26-9-2006 by making following observations :

“7. Having heard the learned advocates appearing for the parties and having perused the material on record, I find there was sufficient evidence to hold all the petitioners personally liable for the loss caused to the Society. It is not the case of the respondents that the petitioners were personally and directly responsible for such loss. Admittedly, the fraud was committed

by an employee of the Society and criminal action for having committed misappropriation of funds of the Society was also instituted against him. Apparently such defaulter employee was absconding and was never traced out. In that view of the matter, when there is insufficient material on record, personal liability of the petitioners could not have been held. The Inquiry Officer only made general observations suggesting that no instructions were given to the concerned employee by any of the members including petitioners. The Tribunal founding it that the criminal prosecution was lodged, observed, however, that no steps were taken to initiate proceedings under Section 96 of the said Act.

8. I find that evidence on record was insufficient to hold the petitioners guilty of having caused loss to the society. Impugned orders therefore, can not be sustained. The same are quashed. In the result, the petition is allowed. The amount deposited by the petitioners before this Court pursuant to an order dated 16th September 2003, shall be returned to the petitioners by A/c. Payee Cheque. Rule is made absolute. No order as to costs."

3. Facts being identical, this petition is also disposed of adopting the same logic. The impugned orders dated 25-5-1999 passed by the Inquiry Officer and order dated 2-8-2003 passed by the Cooperative Tribunal are quashed. The petition is allowed. Rule made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(raghu)